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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Promotion of Competitive Networks)
in Local Telecommunications Markets)
)
Wireless Communications Association)
International, Inc. Petition for Rulemaking to)
Amend Section 1.4000 of the Commission's)
Rules to Preempt Restrictions on Subscriber)
Premises Reception or Transmission)
Antennas Designed To Provide Fixed)
Wireless Services)
)

Cellular Telecommunications Industry)
Association Petition for Rule Making and)
Amendment of the Commission's Rules to)
Preempt State and Local Imposition of)
Discriminatory And/Or Excessive Taxes and)
Assessments)
)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

WT Docket No. 99-217

CC Docket No. 96-98

**COMMENTS OF AVISTA CORPORATION WITH RESPECT TO
NOTICE OF PROPOSED RULEMAKING AND NOTICE
OF INQUIRY IN WT Docket No. 99-217, and THIRD FURTHER
NOTICE OF PROPOSED RULEMAKING IN CC Docket No. 96-98**

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I. IDENTIFICATION OF AVISTA CORPORATION AND ITS INTEREST

Avista Corporation, an electric and gas utility serving customers primarily located in the states of Washington, Idaho and Oregon, submits these comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (the "Notice of Proposed Rulemaking").

Comments concerning or information about this filing, or any other documents in this proceeding, are to be addressed to:

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Avista Corporation has two affiliate companies engaged in certain aspects of the competitive telecommunication business. Avista Corporation therefore generally supports this Commission's efforts at promoting even-handed and fair competition for companies in telecommunication enterprises. The comments set forth below are restricted to issues concerning access under Section 224 of the Communications Act, primarily covered in paragraphs 36-48 of the Notice of Proposed Rulemaking. Avista Corporation may choose to comment further on any issue by the reply comment date of September 27, 1999.

II. STATE REGULATION IN THE NORTHWEST AS TO POLE ATTACHMENTS

Consistent with Section 224 of the Communications Act, 47 U.S.C. § 224, the utility commissions in the states where Avista Corporation provides electric service regulate pole attachment rules and fees. Such state regulation is appropriate, as it permits a relatively local

investigation and implementation of appropriate rules and practices. For example, utilities serving primarily urban regions might have facilities configured substantially differently from utilities that serve primarily rural areas. Moreover, safety and engineering issues pertaining to pole attachments might vary according to terrain, geographic and climate concerns. This regulatory framework should therefore continue.

III. PROPERTY RIGHTS ARE LOCAL AND INDIVIDUAL IN NATURE AND SHOULD NOT BE ALTERED BY NATIONAL REGULATORY PROCLAMATION

The Notice of Proposed Rulemaking acknowledges the local nature of property rights issues. A considerable portion of Avista Corporation's rights of access to property is governed by individually negotiated easements, each being a two-party agreement between the property owner and Avista Corporation. Many of those easements provide rights of access to the specific property for a specific purpose, namely for the installation or maintenance of electric facilities or natural gas facilities. Moreover, some of the property rights held by Avista Corporation were originally acquired through the exercise of eminent domain powers. Like the situation where the company's rights were obtained by franchise or private easement, such proceedings often resulted in payments designed to compensate the property owner for use of specific property for specific purposes. It is not clear what effect the Notice of Proposed Rulemaking might have on those rights, nor on the potential for property owners collecting—or being entitled to collect—additional fees.

In any event, there is no method to ascertain the “status” of Avista Corporation's “ownership or control” of property (including fee title ownership, easements, franchises and other rights-of-way) without a case-by-case, parcel-by-parcel, facility-by-facility investigation. Thereafter, in each instance where rights for third party telecommunications access are not held by Avista Corporation, individual negotiations with property owners would often be necessary to obtain the right to provide

such access to third parties. Avista Corporation's "owned or controlled facilities," as the Notice of Proposed Rulemaking employs that phrase, might well be significantly more constrained than the Notice of Proposed Rulemaking presupposes.

It appears unlikely that the Federal Communications Commission has authority to amend individual deeds, contracts or easements by a rulemaking such as the Notice of Proposed Rulemaking. Moreover, nothing in Section 224 (47 U.S.C. § 224) supports an inference that Congress intended to alter any such arrangements between utilities and property owners, nor that Congress intended to give the FCC the power to do so by regulatory fiat. Under the circumstances, it is not appropriate for an FCC regulation to attempt to override utility easements or franchises merely by employing an expansive definition of property rights. Thus, any Federal Communications Commission regulation purporting to require Avista Corporation to conduct an analysis of its property rights, and then to make various "owned or controlled facilities" available to others, should also require the telecommunications provider seeking to use such "owned or controlled" facilities to pay all costs incurred in the analysis and the use.

Accordingly, the proposed regulatory description of "owned or controlled facilities" is unduly broad. As explained above, there are potentially express and significant limits on the property rights of Avista Corporation and other similarly situated utilities. In the context of the proposed rulemaking, the most appropriate method to recognize the limited nature of Avista Corporation's property rights (or such rights of other similarly situated utilities) is through indemnification. Thus, if an installation of telecommunications facilities occurs as a result of an FCC rule, and that installation violates the applicable franchise, easement or property right, the utility holding the property rights or facilities used for the installation should be indemnified and held harmless by the telecommunications provider that installed the telecommunications facilities.

This issue cannot be addressed solely through lease payments, pole attachment fees, or the like, as improper or unauthorized use of a property right might invoke remedies beyond money damages.

Finally, depending upon the particular situation, it may also be the case that location of communications facilities will involve safety considerations pertaining to the electric or natural gas facilities. All such concerns should be handled locally, by the individual electric or natural gas utility involved, consistent with applicable local or state regulatory requirements. There is no legitimate basis, nor any compelling need, for the Federal Communications Commission to attempt to trump such standards or requirements in the context of promoting competition in the telecommunications business.

Dated this 26th day of August, 1999.

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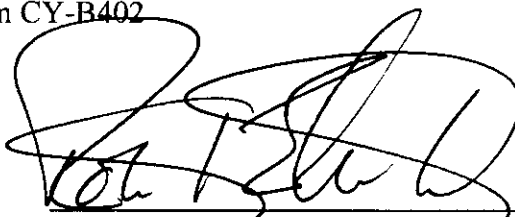
CERTIFICATE

I hereby certify that on August 26, 1999, I caused the original and six (6) copies of the foregoing document to be sent via Federal Express, for next day delivery, to:

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A large, stylized handwritten signature in black ink, appearing to read 'Robert E. Neate', is written over a horizontal line.

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